

REMARKS

Applicants would initially like to thank the Examiner for the allowance of claims 13-24 and 26-30, as well as consideration of the references in Applicants' Information Disclosure Statement as evidenced by the signed PTO Form 1449. Applicants also thank the Examiner for the Telephone Interviews of November 28 and 29, 2005, in which the Examiner confirmed that the pending rejection over Kraft et al. ("Kraft") is based on U.S. Patent No. 6,463,278 as it appears in Applicants' Form PTO 1449, and not U.S. Patent Publication 2002/0107009 as it appears in the Form PTO 892.

Claims 13-24 and 26-36 are now in the application. No claims have been amended, canceled or added.

Claim 31 has been rejected under 35 U.S.C. § 103 as obvious over Warburton et al. ("Warburton") in view of Kraft. The Examiner's rejection is respectfully traversed.

Claim 31 recites: "considering a state of a cellular telephone associated with the cellular telephone number as busy, regardless of an actual state of the cellular telephone." The Examiner cites Warburton as the primary reference for its teachings of diverting an incoming call based on divert instructions. This is a well know feature of telecommunications, but as the Examiner concedes Warburton does not disclose considering a state of the telephone as busy regardless of the actual state of the telephone as recited in claim 31.

What is lacking from Warburton is not provided by Kraft. The Examiner cites Kraft only for its alleged teachings of "considering the state of the telephone associated with the telephone number and during the considering diverting all incoming calls." The alleged support in Kraft is at column 3, lines 1-10 and 38-45, which states:

TABLE 1			
functions and phone setting options			
No.	function	No.	phone settings
1	call divert services	1.1	divert all voice calls
		1.2	divert when not answered
		1.3.	divert when busy
		1.4	divert if not reachable
		1.5	divert all data calls
		1.6	divert all fax calls
		1.7	no diversions/cancel all diversions
2	light	2.1	on
		2.2	off
* * *			

Call divert services may comprise an unconditional diversion of all calls, which is expedient when the user of the phone is at a meeting. Alternatively, the user may decide to have all calls diverted when not answered. Here, he may choose to omit answering the call after having decided, on the basis of a displayed caller ID, whether to answer the call or to divert it by omitting to answer the call. It is also possible to divert call types, such as a fax or data calls. Here, it will be expedient if this took place on the basis of whether equipment for handling these call types is connected.

The above portions of Kraft merely teach that the user can set the phone to divert certain types of incoming calls, or perhaps all incoming calls. To the extent that it diverts all incoming calls, then it teaches nothing more than Warburton, other than perhaps the user can set a state of all calls as opposed to certain types of calls. The above portion of Kraft does not relate in any way to treating a cellular telephone as busy regardless of its actual operating state. The word “busy” only appears in the first paragraph as “divert when busy” (emphasis added), and does not appear at all in the second paragraph. There is no teaching or suggestion of “considering a state of a cellular telephone associated with the cellular telephone number as busy, regardless of an actual state of the cellular telephone” as recited in claim 31.

It is not even clear how the above disclosure is “considering” the state of a telephone at all, let alone considering the state as busy. On page 3, lines 2, the Action states “Kraft teaches considering the state of the telephone . . .” Yet in the next sentence, the Action states that “the

actual state of the telephone is not considered.” Applicants understand that the Examiner is obligated to interpret claims in their broadest possible light for examination, but these are two diametrically opposing statements which cannot be reconciled. Of the two, the former has been stated without basis in fact or technology. Yet the latter observation is the correct one - that “the actual state of the telephone is not considered,” and thus fails to teach or suggest the step of considering, let alone considering the telephone as busy regardless of the actual state of the telephone.

It is further unclear how these teachings of Kraft render claim 31 obvious. The sole link in the rejection between Kraft and claim 31 is that the Kraft approach is “often the same treatment” as considering the telephone as busy. Kraft does not disclose its processing, such that it is unclear on what factual basis the Examiner alleges that Kraft and claim 31 receive “often the same treatment.” Applicants are also unaware of how things that are subject to “often the same treatment” bears on patentability. Either the combination teaches or suggests the claimed invention or it does not. “Often the same treatment” is neither a legal nor semantic substitute for the well established rules of obviousness. The claim 31 limitation of considering a state of a cellular telephone associated with the cellular telephone number as busy, regardless of an actual state of the cellular telephone is new and non-obvious.

Accordingly, claim 31 is patentably distinct over the applied art. Withdrawal of the rejection of claim 31 and allowance of the same is therefore requested.

Claims 32-36, which depend from claim 31, have been rejected on the same grounds as claim 31. For at least the reasons discussed with respect to claim 31, these dependent claims are likewise patentably distinct over the applied art. Withdrawal of the rejection of these claims and allowance of the same is therefore requested.

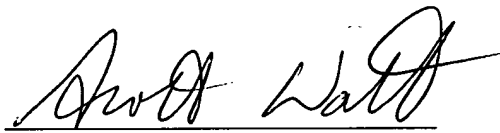
In view of the foregoing, the application is now in condition for allowance and a notice to that effect is earnestly solicited.

If a telephone conference would be of value, the Examiner is requested to call the undersigned attorney at the number listed below.

The Commissioner is hereby authorized to charge/credit any fee deficiencies or overpayments to Deposit Account No. 19-4293 (15047.4104).

Should there be any questions, the Examiner is invited to contact the undersigned at the below listed number.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Watkins", written over a horizontal line.

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